

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

SYTERIA HEPHZIBAH

CASE NO.: 18-40381-KKS

CHAPTER: 7

Debtor. _____ /

**ORDER CONSTRUING “NOTICE OF APPEAL, OBJECTION,
PROTEST AND DENIAL OF CONSENT TO ORDER DATED February
27, 2020” (Doc. 79) and “NOTARY’S PRESENTMENT CERTIFICATE
OF SERVICE” (DOC. 87) AS A NOTICE OF APPEAL TO THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF FLORIDA**

THIS CASE is before the Court on the below-listed papers filed by
self-represented Debtor, SYTERIA HEPHZIBAH:¹

1. *“Notice of Appeal, Objection, Protest and Denial of Consent to
Order Dated February 27, 2020,”* (Doc. 79);
2. *“Notary’s Presentment Certificate of Service,”* (Doc. 87); and
3. *“Motion for Permission to Appeal in Forma Pauperis and Affidavit,”*
(Doc. 90).

¹ Former Debtor states her name in her papers as “Highly Favored Shekinah El, General Executrix-Caveatrix Autochthonous American Moor Alien (Friend) Republican Universal Government [AAMARU] Religious Consul Association Testamentary Trust. ... In Propria Persona proceeding in Sui Juris capacity;” “Highly Favored Shekina El,” and “Highly Favored Shekinah El, competent Natural Wombman of majority.” Doc. 79-1, pp. 1, 10.

Because these papers were not filed timely, and for the other reasons set forth below, this Court has requisite jurisdiction to enter this Order to clarify the record and assist the district court in considering former Debtor's appeal.²

BACKGROUND

Former Debtor filed her voluntary Chapter 7 Petition on July 18, 2018.³ She received a bankruptcy discharge on November 7, 2018.⁴ This case was closed on May 9, 2019.⁵ In November of 2019 Debtor filed papers seeking, among other things, to reopen this case.⁶ On December 27, 2019, this Court entered an order reopening this case for the limited purpose

² Upon the filing of an appeal, the bankruptcy court is divested of its control over matters on appeal but retains jurisdiction to implement or enforce the order or judgment. *DiCola v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re Prudential Lines, Inc.)*, 170 B.R. 222, 243-44 (S.D.N.Y. 1994), *appeal dismissed*, 59 F.3d 327 (2d Cir. 1995); *accord NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585 (6th Cir. 1987) (bankruptcy court may enforce or implement (as opposed to alter) a judgment despite filing of appeal); *NBD Bank v. Fletcher (In re Fletcher)*, 176 B.R. 445, 446 n.1 (Bankr. W.D. Mich. 1995) (rendering a written opinion after a party filed a notice of appeal is permissible as an aid to the appellate court's review). Filing of a notice of appeal deprives the bankruptcy court of jurisdiction to enter orders that would affect or modify any issue or matter on appeal. *Bialac v. Harsh Inv. Co. (In re Bialac)*, 694 F.2d 625 (9th Cir. 1982); *Hyman v. Iowa State Bank (In re Health Care Prods.)*, 169 B.R. 753, 755 (M.D. Fla. 1994) (filing notice of appeal from appealable order divests lower court of jurisdiction over issues related to the appeal).

³ Doc. 1.

⁴ Doc. 38.

⁵ Doc. 57.

⁶ Doc. 59.

of permitting Debtor to pursue allegations that certain parties had violated the discharge injunction.⁷

On February 26, 2020, former Debtor filed papers that the Court construed as a *Motion Alleging Discharge Violations* (“Discharge Motion”).⁸ As authorized by the Court in an order entered February 27, 2020, which will be referred to as the “Stay Relief Order,”⁹ the Office of the Attorney General of the State of Florida (“OAG”) filed a response to the Discharge Motion on behalf of interested parties, Jesse Haskins, the Honorable Angela C. Dempsey, Sara Hassler, Jon S. Wheeler, in his official capacity as the Clerk of the court for Florida’s First District Court of Appeal, the Florida Department of Highway Safety and Motor Vehicles, Peter Stoumbelis, Richard Blanco, and Kenneth L. Green (collectively “Interested Parties”).¹⁰ Based on that response, the Court found that all actions by Interested Parties took place post-bankruptcy

⁷ *Order Conditionally Granting, In Part, Former Debtor’s [Motion to Reopen Bankruptcy Case], Titled Affidavit of Facts to Reopen Bankruptcy Case No.: 18-40381 and Adversary Proceeding Case No.: 18-04006*, Doc. 61.

⁸ Doc. 71.

⁹ *Order (1) Granting, in part, Interested Parties’ Amended Motion to Confirm Termination of or for Relief from Automatic Stay and Incorporated Memorandum of Law (Doc. 68); (2) Canceling March 3, 2020 Hearing; and (3) Providing “Interested Parties” and Linebarger Goggan Blair & Sampson, LLP, Attorneys at Law, an Opportunity to File Responses to “Motion Alleging Discharge Violations”* Doc. 72.

¹⁰ *Interested Parties’ Response to the Discharge Motion*, Doc. 76.

and that no discharge violation had occurred. The Court denied all relief requested by former Debtor.

By the February 27 Stay Relief Order the Court also confirmed that the automatic stay pursuant to 11 U.S.C. § 362(a) was not reinstated when this case was reopened.¹¹

On March 23, 2020, former Debtor filed two papers; one entitled: “*Notice of Appeal, Objection, Protest and Denial of Consent to Order Dated February 27, 2020,*” (docketed as “Notice of Appeal”) and the other entitled “*Motion for Permission to Appeal In Forma Pauperis and Affidavit.*”¹² The paper docketed as Notice of Appeal is styled as a direct appeal to the Eleventh Circuit Court of Appeals.¹³ Because neither of these papers were signed, the Court entered Submission Error Notifications as to each.¹⁴

On April 1, 2020, Debtor filed a document entitled “*Notary’s Presentment Certificate of Service*” (“Notary’s Presentment,” Doc. 87),

¹¹ Doc. 72, p. 4: “The automatic stay has not been reinstated and is not in effect.”

¹² Docs. 79 and 80.

¹³ Doc. 79, p.1. On this document, former Debtor lists her name as “Highly favored Shekinah El, General Executrix-Caveatrix Autochthonous American Moor Alien (Friend) Republican Universal Government [AAMARU] Religious Consul Association Testamentary Trust . . . In Propria Persona proceeding in Sui Juris capacity,” she lists her address as “7643 Gate Parkway, Suite 104-705, Jacksonville, Florida [32256]”

¹⁴ Docs. 81 and 82.

attached to which is another copy of the previously filed document entitled, “*Notice of Appeal, Objection, Protest, and Denial of Consent to Order Dated February 27, 2020.*” Also attached to the Notary’s Presentment is a document, signed by former Debtor and dated March 30, 2020, entitled “*Affidavit of Merits to Appeal in Propria Persona (or Pro Bono)*” (“Affidavit”).¹⁵ Because former Debtor signed the Affidavit, the Court will construe the “Notice of Appeal” and “Notary’s Presentment” together as a properly signed notice of appeal (“Debtor’s Notice of Appeal”).¹⁶ Because Debtor’s Notice of Appeal was docketed on April 1, 2020, the Court construes the date former Debtor filed her appeal of the Stay Relief Order to be April 1, 2020.¹⁷

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¹⁵ Doc. 87-1, pp. 1-9. Here, former Debtor signed under the name: “*Highly Favored Shekinah El, Executrix-Caveat for: Autochthonous American Moor Alien (Friend) Republican Universal Government [AAMARU] Religious Consul Association Tentamentary Trust . . . competent Natural Wombman of majority.*” *Id.* at pp. 8-9.

¹⁶ Docs. 79 and 87.

¹⁷ On April 9, 2020, former Debtor filed another document, this time signed, entitled “*Motion for Permission to Appeal In Forma Pauperis and Affidavit,*” (Doc. 90). Because the first such document was unsigned, the Court denied that as moot. Doc. 95.

DISCUSSION

Former Debtor is Improperly using an Address that is Different from the Address She Filed with the Court.

When former Debtor filed this Chapter 7 case she listed her address as: “501 Capitol [*sic*] Circle Ave., FCI Tallahassee, Tallahassee, FL 32301.”¹⁸ During the case, former Debtor filed a “*Notice of Change of Address*,” listing her address as: “#242901, Leon County Detention Facility, P.O. Box 2278, Tallahassee, FL 32316-2278.”¹⁹ On the papers she has filed since this case was re-opened, including Debtor’s Notice of Appeal, former Debtor uses an address in Jacksonville, Florida.

Former Debtor has not filed a statement of change of address since this case was re-opened, as required by Fed. R. Bankr. P. Rule 4002(a), which provides:

Rule 4002. Duties of Debtor

(a) **In General.** In addition to performing other duties prescribed by the Code and rules, the debtor shall:

...

(5) file a statement of any change of the debtor’s address.²⁰

¹⁸ Doc. 1.

¹⁹ Doc. 49.

²⁰ Fed. R. Bankr. P. 4002(a).

Former Debtor's papers filed since November 6, 2019 have been filed with an address that differs from the address on file with this Court. For that reason, those papers are technically improper and deficient.

Debtor's Notice of Appeal is not timely.

Under Rule 8002, Fed. R. Bankr. P., "a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed."²¹ The order from which Debtor attempts to appeal was entered February 27, 2020.²² Former Debtor's unsigned paper, docketed as "Notice of Appeal," was filed on March 23, 2020. That paper, even had it been signed, did not constitute a timely notice of appeal because it was not filed within fourteen (14) days of the Stay Relief Order. Debtor's Notice of Appeal, filed effective April 1, 2020, is equally untimely.

Former Debtor has not followed the proper procedure to file a direct appeal to the Eleventh Circuit.

Under 28 U.S.C. § 158(d)(2), courts of appeals have jurisdiction over final judgments, orders, decrees, or with leave of court other interlocutory orders, "if the bankruptcy court . . . acting on its own motion or at the

²¹ Fed. R. Bankr. 8002(a)(1).

²² Doc. 72.

request of a party to the judgment, order, or decree . . .” certifies the underlying judgment, order, or decree for a direct appeal.²³ A certification is issued in one of three ways: 1) the Court may enter a certification on its own motion;²⁴ 2) all parties to the appeal may file a joint certification;²⁵ or 3) the Court may enter a certification on request of a party or parties, if the request meets certain requirements.²⁶ A certification becomes effective when: “(1) the certification has been filed; (2) a timely appeal has been taken under Rule 8003 or 8004; and (3) the notice of appeal has become effective under Rule 8002.”²⁷

Although former Debtor alleges her “[a]ppeal is taken as of right ... to the United States Court of Appeals for the Eleventh Circuit,”²⁸ to date former Debtor has not filed a single document that could be construed as a request for certification for a direct appeal, pursuant to 28 U.S.C. § 158(d)(2) or Rule 8006. The Court has not issued a certification for direct appeal on its own pursuant to Rule 8006(e), Fed. R. Bankr. P. and does

²³ 28 U.S.C. § 158(d)(2)(A) (2020).

²⁴ Fed. R. Bankr. P. 8006(e).

²⁵ Fed. R. Bankr. P. 8006(c).

²⁶ Fed. R. Bankr. P. 8006(f). If a party requests a certification from the Court, the request must include a basis for the request under 28 U.S.C. § 158(d)(2)(A)(i)-(iii). Fed. R. Bankr. P. 8006(f)(1).

²⁷ Fed. R. Bankr. P. 8006(a)(1)-(3).

²⁸ Doc. 87-5, ¶ 1.

not intend to do so; former Debtor has not raised any issue worthy of a direct appeal to the Eleventh Circuit Court of Appeals. For these reasons, it is appropriate to treat Debtor's Notice of Appeal as a routine appeal to the United States District Court for the Northern District of Florida.

Debtor's Notice of Appeal is premature.

Debtor's Notice of Appeal is premature; the Stay Relief Order is interlocutory, and not a final, appealable order. In the Stay Relief Order this Court reserved jurisdiction to consider additional relief requested by Interested Parties.²⁹

The relief granted in the Stay Relief Order was not the type of relief considered final for purposes of appeal. The Bankruptcy Code provides that an appeal "as of right" may be taken: "(1) from final judgments, orders, and decrees; [or] (2) from interlocutory orders and decrees issued under section 1121(d) of title 11" ³⁰ The Supreme Court recently held in *Ritzen Group, Inc. v. Jackson Masonry, LLC*:

Orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case. . . . The adjudication of a motion for relief from the automatic stay forms a discrete

²⁹ The Court has now granted additional relief to the Interested Parties: *Supplemental Order Granting Interested Parties' Amended Motion to Confirm Termination of or for Relief From Automatic Stay*, Doc. 93.

³⁰ 28 U.S.C. § 158(a) made applicable by Fed. R. Bankr. P. 8003(a)(1).

procedural unit within the embrative bankruptcy case. That unit yields a final, appealable order when the bankruptcy court unreservedly grants or denies relief.³¹

Unlike the order at issue in *Ritzen Group*, this Court's Stay Relief Order did not unreservedly grant or deny stay relief. Rather, that order merely confirmed existing law: that no stay went into effect when this case was re-opened.³²

For the reasons stated, it is ORDERED:

1. The Clerk is directed to treat Debtor's Notice of Appeal ("*Notice of Appeal*," (Doc. 79) and "*Notary's Presentment Certificate of Service*," Doc. 87)) as an appeal filed April 1, 2020.
2. Because no direct appeal to the Eleventh Circuit is proper in this case, the Clerk shall handle Debtor's Notice of Appeal (Docs. 79 & 87) as a standard appeal to the United States District Court for the Northern District of Florida and process and transmit the record accordingly.

³¹ *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S.Ct. 582, 586 (2020), citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015).

³² To the extent that the Stay Relief Order in this case may be construed as an order granting stay relief under the Supreme Court's ruling in *Ritzen Group*, Debtor's Notice of Appeal remains untimely.

3. The Clerk is further directed to transmit Debtor's *Motion for Permission to Appeal In Forma Pauperis and Affidavit* (Doc. 90) to the United States District Court for the Northern District of Florida for consideration.

DONE and ORDERED on May 6, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Counsel for Interested Parties is directed to serve a copy of this Order on Debtor and other interested parties and file a certificate of service within three (3) business days of entry of this Order.